

THE TRAVANCORE ARBITRATION BILL.

MR. PUTHUPALLY S. KRISHNA PILLAI: I beg to introduce the Travancore Arbitration Bill. Disputes arising in commercial transactions should, as far as possible, be decided by arbitration. It is not in the interest of the commercial community that they should be driven to the courts for settling their disputes. There is some provision relating to this contained in the Civil Procedure Code. But it is inadequate to meet cases contemplated by this Bill. This Bill also like the other Bills has been drawn up on the lines of the British Indian Act. Decided cases on this matter could not, as honourable members know, be availed of for the purpose because there is no statutory provision enabling such arbitration proceedings to be started and enforced. Apart from the Civil Procedure Code we have no other law relating to Arbitration. The provisions of the Civil Procedure Code are inadequate for the purpose. If parties agree that in case of any dispute it must be referred to arbitration, there must be statutory provision for compelling one or other to conform to the agreement. I move that this Bill be read in the Assembly.

MR. M. P. JOSEPH: I second it.

The motion was put and carried.

The Secretary to the Sri Mulam Assembly then read the title of the Bill—"The Travancore Arbitration Bill."

MR. PUTHUPALLY S. KRISHNA PILLAI: I beg to move that the Travancore Arbitration Bill be referred to a Select Committee consisting of

Messrs.

1. S. Krishna Iyer
2. N. Narayana Kurup
3. T. T. Kesavan Sastri
4. Thariathu Kunjithommen
5. K. Narayanaperumal Nadar
6. R. Narayanan Namboori
7. Srimati T. Narayani Amma
8. N. Ramakrishna Pillai
9. P. Sivarama Pillai
10. Dr. C. R. Harler and
11. Mr. Puthupally S. Krishna Pillai,

to report within three months.

MR. M. P. JOSEPH: I second it.

The motion was put and carried.

THE TRAVANCORE EQUITABLE MORTGAGE BILL.

MR. PUTHUPALLY S. KRISHNA PILLAI: I beg to introduce the Travancore Equitable Mortgage Bill. It is a one-clause Bill but marks an important era in the history of legislation in Travancore. It has

been the uniform practice and the accepted rule of law that no person shall be entitled to claim or get a charge on immovable property unless that charge was created under a document in writing duly registered. Though in theory oral sales and mortgages are not invalid, in practice the rule is as I have stated. Government have been receiving memorials and resolutions passed by the mercantile community in the State that the absence of a legislation enabling the creation of charges on immovable properties by deposit of title deeds is a serious handicap. The matter has been duly considered by the Government and they have thought that a Bill like this might be brought forward for consideration by the Assembly. It is provided in clause 2 that such rights and liabilities shall be enforced in the same manner as the rights and liabilities under an hypothecation deed. What an hypothecation deed is and what the rights and liabilities are, are well known to all the members of the legal profession and also all the other honourable members of this House. According to this Bill such equitable mortgages can be brought into being only within the municipal areas mentioned in clause 1 of the Bill. It is within the powers of the Government to extend the operation to non-municipal areas as well. But at present it is proposed to confine the operations only to the municipal areas mentioned in the Bill.

PRESIDENT : You may make it clear that the provision will apply to disputes arising within the Municipalities even though the properties may lie outside.

MR. PUTHUPALLY S. KRISHNA PILLAI : Yes, Sir. That, I submit, is a matter covered by judicial decisions. People conversant with the law relating to this matter know that the properties need not be within the municipal areas but only the transaction need be within the municipal area. I have already pointed out that the title deed must be deposited for the purpose of creating a charge.

MR. KOTTALIL P. ABRAHAM : Is it contemplated under this Bill that there should be any sort of rules for writing title deeds?

MR. PUTHUPALLY S. KRISHNA PILLAI : It is not contemplated in this Bill. The creditor who receives the deposit of the title deeds will always see that the deed is deposited for the purpose of creating the charge. Members of the profession who are conversant with the methods elsewhere can clearly understand this. Some memorandum, some writing, some letter is taken for the purpose. More than that is not necessary.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI : It is not a matter of evidence?

MR. PUTHUPALLY S. KRISHNA PILLAI : Yes, it is purely a matter of evidence. I therefore beg to move that this Bill be read in the House.

MR. M. P. JOSEPH : I second it.

MR. S. KRISHNA AIYAR. Sir, I would like to make a few observations on this Bill. No doubt there are difficulties; for example an attachment may be placed on property and the decree holder who placed the attachment may not be in a position to know that equitable charges have been created as it is not possible for him to get any information or notice. Nevertheless, this measure would be of great help to the mercantile community and the banking world in particulars. There are very many merchants in Alleppey and other places who do want accommodation and who may be prepared to charge their properties but who might find that when once a charge is created the credit has vanished. Such merchants will find it a very great help if this Bill is brought into effect. There are also small bankers who may be prepared to deposit title deeds for advance from larger banks without impairing their credit. With reference to the Travancore Credit Bank there is absolute necessity for a legislation of this kind. From all over Travancore people come forward for long term loans on landed security. The learned Legal Remembrancer has said that it does not matter whether the property is outside municipal areas or not. It is enough that the transactions take place in the capital where the Credit Bank functions. But here again difficulties might supervene. But on the whole the Bill is very advantageous to the commercial world.

MR. J. E. A. PEREIRA: Sir, this Bill, although a brief one, will have far-reaching effects in the commercial world. Equitable mortgage can and ought to find a place in all progressive countries, but the question is whether this is suited to this country under prevailing conditions. Here, the ownership of land is subject to lawsuits of various complexity, and under such conditions whether equitable mortgage is suitable to this country. I fear that in the hands of designing people it will prove a very handy tool to defeat the creditors.

PRESIDENT: Is the honorable member aware that in Travancore to day oral mortgages are possible?

MR. J. E. A. PEREIRA: No, Sir.

PRESIDENT: They are.

MR. J. E. A. PEREIRA: I have my own doubts as to the suitability of equitable mortgages to the conditions prevailing here.

Before this important Bill finds a place in the Statutes, I would plead that it should be studied carefully in the Select Committee to find out the necessary safeguards in order to make it suitable to local conditions.

MR. E. SUBRAMONIA AIYAR: Sir, so far as Travancore is concerned, for any transfer of immovable property, no form is prescribed. I should very much like to see some provisions made which will prescribe suitable rules relating to the transfer of immovable properties. In British India they have got the Transfer of Property Act, and in the matter of sales, mortgages, exchanges, sales etc. writing and

registration are prescribed. But in Travancore we have no such law and oral mortgages and oral hypothecations may also be had. So, if we are going to create a charge on property in an expeditious manner without going through certain formalities, I do not mean to say that this is an innovation in Travancore. In England, mortgage was effected by way of a legal conveyance and so much so the first mortgagee became the owner of the property and not the mortgager; and I do not propose to deal further with the law in the matter at this stage.

The equitable mortgage came when in pursuance of an agreement to execute a legal conveyance the title deeds were handed over and the money was taken the equity courts said even if the conveyance was not subsequently executed that what ought to be done may be treated as having been done. There was the Statute of Frauds in England that every transaction relating to land must be in writing. Nevertheless the chancery Courts in England accepted mortgage by deposit of title deeds on what is called the doctrine of part-performance.

In 1925, there was a law of property reform in England, the famous Lord Birkenhead's Act. Every student of law knows that so far as the law relating to landed property in England as concerned the law was highly technical and complicated and it was given to Lord Birkenhead to come to the rescue of the Englishmen and put the law on a simplified basis. Even in that Act this kind of equitable mortgage was left untouched. It may be urged that this form of mortgage can be adopted in Travancore as well because the commercial transactions may require charges being created on immovable property in an expeditious way. At the same time we should take care to see that no opportunities are given for the commission of fraud or forgery. Certainly in the further stages of the Bill those matters may be taken into account.

Another matter I should emphasise is that it is better to take away the name "Equitable Mortgage Bill," because difficulties may crop up. If we make it the law in Travancore that the mortgage of land can be made by simply depositing the title deeds with the person who advances money with the intention of creating a mortgage, it is highly necessary that care should be taken to prevent fraud in transactions relating to law. As the Legal Remembrancer pointed out, generally, a memorandum or some writing may be taken in that behalf. When you take a memorandum or some writing and if it contains anything more than what is necessary, the rule of registration may come into operation. Anyhow, if the House thinks that Travancore requires the creation of a charge on immovable properties by this method I should suggest that we should make it clear that every transaction relating to land shall be in a particular form and make this an exception.

Now there is the Registration Act. It merely says that if the transaction is in writing it should be registered. It does not say that the transaction must be in writing. So, I should request the Government to introduce a piece of legislation in Travancore that any transaction relating to land, whether it be by way of sale, mortgage or any other form, shall always be in writing with certain definite exceptions.

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Another suggestion that I would make is that the remedies under a mortgage be made most effective. So, I would request the House to consider whether we shall not make a complete law relating to mortgage. So, these matters should be taken into consideration by the House in accepting the principle of the Bill.

MR. S. CHATTANATHA KARAYALAR: Sir, I have great pleasure in welcoming the principle embodied in the one clause Bill placed before the House. But, Sir, I am sorry that as the law of the country recognises oral transfers, sales, mortgages, etc. this Bill will be rendered infructuous in practice. I fear that in the actual working of the Bill if it is passed into law, difficulties of a serious nature may arise. Mortgages by oral transactions are recognised by law and will continue to be perfectly valid in law even if the Bill becomes law. This state of affairs will surely pave the way for a good deal of fraud and thereby hinder commercial transactions.

PRESIDENT: I think the Legal Remembrancer will explain the position.

MR. PUTHUPALLY S. KRISHNA PILLAI: Sir, the question of preparing a Bill which will cover all laws relating to the transfer of properties is under the consideration of Government. And the Law Department has made headway with that work and it will be published in the Gazette in due course. In order that a complete round of commercial laws may be framed this Bill was prepared and it is only the beginning of what is to follow. If the members think that this will be a means for defrauding honest people I can only answer that this Bill does not contemplate dishonest people but only honest people of the commercial world. For instance, a person has entered into a transaction on his personal credit with a bank and he has drawn an amount of, say, Rs. 20,000. The bank at a moment's notice demands repayment.

MR. E. P. VARGHESE: It is not always evidenced in writing, such loans and advances?

MR. PUTHUPALLY S. KRISHNA PILLAI: A question like that from an honourable member like Mr. E. P. Varghese gives me no small surprise because this is one of the most important principles contained in the Transfer of Properties Act which both myself and himself have studied. What is there when the law says, "no, it need not be evidenced in writing"? Evidence in writing is created for the purpose of showing that the document has been pledged. To that extent, an evidence in writing may be of help to the person who takes the pledge. Otherwise, an unscrupulous debtor may say that he borrowed the document from him to see whether the properties involved could be purchased. So that the person who wants to get a security will also see that some letter or writing is taken from him in which he says that the document is sent on to him for such and such purpose. I refer to Mulla's Transfer of Property Act.

MR. E. P. VARGHESE: We have not enacted the Transfer of property Act,

MR. PUTHUPALLY S. KRISHNA PILLAI: Yes, yes, but we have made provision for equitable mortgages. The members have been pointing out that under the existing law oral sales and oral mortgages are permissible. But I ask how many honourable members of this House have taken oral sales and mortgages. As members of the profession I put it straight to them. And how many of these oral sale cases have been upheld by our courts. You can say in theory that the sale need not be evidenced by writing registered, because there is no enactment corresponding to the Transfer of Property Act. But how many sales have taken place under the oral system which has been now put forward. After all, there is no law which demands that the sales shall be in writing, and therefore, a bill of this nature will not come as a surprise. This goes one step in check of the existing law. If when you say that a mortgage can be created orally, if when you say that a sale can be created orally, people are not frightened, why should you fight shy of a law which demands that an oral mortgage shall be evidenced by the possession of the title deed of the properties mortgaged? In British India this is the law; in Cochin this is the law: in Mysore there is a law similar to this and it does not stand to reason that we should not have a similar law enabling men to enter into honest commercial transactions.

PRESIDENT: It is not with a view to supplement what has fallen from eminent legal gentlemen that I wish to say a few words before this matter is moved. My only excuse for making this exposition is that I have had probably more experience than most honourable members of this House in dealing with this particular form of mortgage because a large portion of the transactions dealt with on the original side in the Madras High Court has reference to this form of mortgage.

Let me make one or two matters perfectly clear. In Travancore to-day there is no Transfer of Property Act. As has been pointed out by Mr. E. Subramonia Iyer, the Registration Act merely says that if there is a document of a certain kind or category it must be registered. It does not lay down that sales or mortgage or exchanges or leases in writing must be registered. If there is to be the sale it must be registered. The Transfer of Property Act in British India lays down that there can be no sale of the property involving a certain amount unless there is a registered document. There can be no lease of a certain type unless there is a registered document. That law, we have not got here. I think it is time that that matter is very carefully looked into, and I may assure honourable members that Government are bestowing attention on this subject, so that a Bill will shortly be placed before the honourable members, for the purpose of considering the need of providing for compulsory writing and compulsory registration as necessary for the purpose of creating certain legal results. Nobody can be sure of the title of a person to property unless the history of the property is perfectly clear. In England a great deal of the money that was earned by the great authorities on Real Property during four hundred or five hundred years, has been due to the uncertainty and complexity of the law relating to land.

[President.]

In certain commercial centres, money is needed and it is needed only for a short time, say for ten days. If a bank or an individual wants to lend the money, he takes the title deed. He then sees the encumbrances which are registered. If there are no previous transactions relating to this property he lends the money. This equitable mortgage is evidenced by a document recording that previous transactions have been entered into. This document may or may not be registered. That is a matter which the honourable members have to consider in the Select Committee. I also want honourable members to bear in mind that this legislation must not be taken as a sporadic or piecemeal legislation. It must be dealt with in conjunction with the Transfer of Property legislation and if the Legal Remembrancer would make it clear, that will be brought into operation simultaneously with the other laws. In the transactions of the Credit Bank a tremendous amount of delay takes place because of the requisite formalities. The object of this Bill is to facilitate commercial transactions without undue publicity or delay.

MR. PUTHUPALLY S. KRISHNA PILLAI: Sir, when this bill itself was drafted, the intention was that it should be brought into operation only at such time as Government considered it proper or feasible. In clause I, in this Bill, unlike any other bills, it is specifically provided that "it shall come into force at such time as is notified in the Government Gazette". Ordinarily, the operative clause is left blank; but in this particular case, in order that the House may be quite sure of that fact, sub-clause (c) provides that it will come into operation only when the Government notifies in that behalf. As I have stated, a comprehensive legislation dealing with all transfers of immovable properties is under contemplation and it is hoped that at the next sitting of the Assembly such a bill will be introduced. In the meantime, the principle involved in this Bill, as I pointed out, is a principle which has been accepted throughout British India and in all the important states.

I have brought forward about seven other bills, all relating to commercial matters. This Bill will complete the round of bills enacted for the purpose of safeguarding the interests of commercial men. Our people are still afraid of the dishonesty and unscrupulousness of the men around them. In this piece of legislation we are not making a large divergence from the law that is already existing. As pointed out by Mr. E. Subramonia Aiyar, the sale or a hypothecation may be made by word of mouth, but how many of our people have been able to get oral hypothecations of immovable properties? This goes one step further, and gives sanctity to such transactions which are evidenced by the possession or the delivery of the title deeds. We are not doing anything more. We are only more conservative in this respect. You say that now while sitting in this House you can mortgage your immovable property. I say that you should not do anything so absurd as that but that you must

go home, get your title deeds and at least pledge them before you complete the transactions. That is all what is said here. It may probably be in restraint of your present freedom, but I say that there must be at least this restraint. I therefore move that the Bill be read in the Assembly.

MR. M. P. JOSEPH : I second it.

PRESIDENT : Any other honourable member wishing to speak?

MR. JOSEPH VITHAYATHIL : I concede that there is a necessity for having a legislation of this nature in the interests of the commercial people. But we have to guard against possible acts of fraud. You may hand over your documents to the professional document writers and these people may deceive you by handing over these title deeds to others and creating evidence of false pledges. There is also another matter to be considered. If you chance to lose your title deed, there is no likelihood of your getting any amount on the security of your immovable property. No one will be satisfied with a certified copy of the title deed.

PRESIDENT : Invariably this is the result wherever there is this form of mortgage existing.

MR. JOSEPH VITHAYATHIL : My suggestion is that the commercial people who want to take advantage of the provisions of this enactment should have their names published in the Government Gazette beforehand, or should have their names entered in special registers to be kept for the purpose in the areas to which the Act is applicable. Such a provision will be an effective check on fraud being practised, and it will at the same time enable people who happen to lose their title deeds to raise loans on the security of their properties.

MR. PUTHUPALLY S. KRISHNA PILLAI : Sir, I believe, all these matters can be considered by the select committee and if any further safeguard is necessary in this matter it may be made by the select committee. I have no objection to that course.

The motion was put and carried.

The Secretary to the Srimulam Assembly then read the title of the Bill "The Travancore Equitable Mortgage Bill".

MR. PUTHUPALLY S. KRISHNA PILLAI : Sir, I beg to move that the Travancore Equitable Mortgage Bill be referred to a Select Committee consisting of Messrs.

- (1) S. Krishna Aiyar,
- (2) N. V. Joseph,
- (3) E. E. Pandarathil,
- (4) Kaviyur K. K. Kochukunju,
- (5) P. Narayana Pillai,
- (6) M. Sivathanu Pillai,
- (7) Joseph Vithayathil,
- (8) Kainikkara M. Padmanabha Pillai,
- (9) M. Ramiah Pillai,
- (10) Srimathi T. Narayani Amma, and
- (11) The Legal Remembrancer, to report within three months.

The question whether the Bill be referred to the Select Committee consisting of the above mentioned members was put to vote and carried.

The Bill was accordingly referred to the Select Committee.

THE TRAVANCORE TELEPHONE BILL.

MR. PUTHUPALLY S. KRISHNA PILLAI : Sir, I beg to introduce the Travancore Telephone Bill.

Honourable members are aware of the fact that last year, during the budget debates, this House was called upon to vote in favour of the opening and establishment of the trunk telephones in Travancore. The work was commenced and the only difficulty that we now find in the matter is the absence of proper legislation enabling the work to be carried on. The work is likely to be finished very soon : at the same time, it is necessary that we should have certain statutory protection in regard to its working. This Bill is therefore proposed. As pointed out in the statement of objects and reasons, part I of the Bill deals with definitions. Part II deals with the privileges and powers of Government. It is stated that so far as the operation of telephones in the State is concerned Government should have complete control over the system and no private individual will be permitted to have telephone service unless he has a license or permit issued by the Government, just as in the case of electric installations. Naturally, Government have reserved the power to suspend, to stop or to intercept telephone communication, when in any emergency public interests demand such a course of action.

I may also mention that if, in connection with the installation, damage is done to private property, provision is made for payment by Government. Of course, there are provisions for the punishment of persons who meddle with telephone apparatus or tamper with the wire or disturb the connectin. As the House is aware, these provisions are absolutely essential for the proper working of public utility services like the telephone.

I beg to move that the Bill be read in the Assembly.

MR. M. P. JOSEPH : I second it.

DR. C. R. HARLER (Planters) : Sir, I welcome this Bill in that it marks a step forward in the development of the State.

In the High Range, we have a complex telephone system extending from Bodinayakanur, through Top Station into Travancore, on to Munnar and then down to Pallivasal in one direction, and to Vagavurrai in the other. The system probably covers fifty miles; we have two exchanges and about a hundred phones.

Sir, Section 3 of the Bill provides that the Government will have power to grant licenses to persons working telephones and also to